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THE LOTTERY CASE. — With the exception of the Insular cases no decision of the Supreme Court in recent years has elicited so much comment as that lately handed down in the case of *Champion* v. *Ames*, 23 Sup. Ct. Rep. 321. The case, which came up on *habeas corpus* proceedings, decides that section one of the Act of 1895, prohibiting the transmission of lottery tickets between states, is not unconstitutional as applied to one who, for the purpose of disposing of them, causes gambling tickets having a commercial value to be carried from Texas into California by means of a common carrier engaged in interstate commerce.

In considering the case three points are to be borne in mind: first, that, unlike the vast majority of cases, the question of the power of a state to control commerce is only indirectly raised; second, that Congress has acted by an express declaration, and not by silence; and third, that the decision of the case necessarily includes a definition of the term "commerce." With respect to the first point it has been objected that, as this decision gives Congress power to legislate upon the subject, all state legislation will be invalidated, and consequently Congress can force lottery tickets upon a state against its will. This is probably true, but it does not seem much more calamitous than that by mere silence Congress can force liquor down a state's unwilling throat. *Leisy* v. *Hardin*, 135 U. S. 100. With regard to the extent of the direct power of Congress over interstate commerce the minority objected that the power to regulate does not include the power to destroy, and further that Congress has no police power. The first objection seems to be answered by a century's acquiescence in the embargo cases; the second by the argument that the power to regulate should not

be cut down merely because a certain Act, besides regulating, happens also to protect the morals or health of the community.

The cardinal objection, however, which is made to the principal case, is that the transaction was not "commerce." In defining this term Chief Justice Marshall has said that it is more than traffic, it is intercourse; and the cases have decided that it includes navigation, and the transportation of persons. *Gibbons* v. *Ogden*, 9 Wheat. (U. S. Sup. Ct.) 1; *Head Money Cases*, 112 U. S. 580. But both text-writers and courts have united in declaring that only when there is a prospective sale, barter, or exchange does the term include the transportation of property. See 2 STORY, CONST. § 1061, note; *Hooper* v. *Cal.*, 155 U. S. 648. It may well be doubted whether a broader definition will not eventually prevail. For, if to carry a person for hire is commerce — as it unquestionably is — the same should logically be true of the carriage of property for hire. The mere payment of compensation, irrespective of any sale or exchange, or of the status of the transporter as a common carrier, results in a commercial transaction. In the principal case, however, it was urged that as these tickets were not legally vendible in either California or Texas they were not subjects of commerce, and that they could not be made such merely through transportation by a carrier. To these arguments there are two valid replies: first, that traffic in forbidden articles does exist in fact, and therefore, as commerce is a question not of law but of fact, does constitute commerce; and second, that the existence of commerce is often determined not so much by the intrinsic nature of the thing carried as by the nature of the instrumentality of carriage. In accord with this view is a recent statement by the Supreme Court that "transportation for others, as an independent business, is commerce, irrespective of the purpose to sell or retain the goods which the owner may entertain. . . ." *Hanley* v. *Kansas, etc., Ry. Co.*, 23 Sup. Ct. Rep. 214. In this connection, however, it is imperative to note that a party who merely ships goods subject to interstate commerce does not thereby necessarily become engaged in interstate commerce. *Kidd* v. *Pearson*, 128 U. S. 1.

In fact, this distinction is really decisive of the principal case. Lottery companies are not engaged in interstate commerce, and are therefore subject to control by the state; lottery tickets when sent beyond the state are subjects of interstate commerce and therefore within the control of Congress. Technically the decision stands for this, and nothing more. Broadly it is another sign of the times. Taken with the rejuvenation of the Sherman Act by the Addyston Pipe Company case, the recent beef-trust decision, the energy of the government as exemplified by its prosecution of the Northern Securities Company, and the establishment of the Department of Commerce, it marks the tendency towards an obliteration of state lines and a centralization of power in the federal government.

FRAUD WITHOUT DAMAGE AS GROUND FOR RESCISSION. — In spite of the vast amount of judicial consideration of the subject of fraud, it has apparently remained for a recent case to raise the interesting question whether a suit for rescission on the ground of fraud may not be maintained although there is no damage to the plaintiff, when there is damage to a third party. The plaintiff had made an oral agreement with his neighbor not to sell his summer residence to anyone who would use it for an improper